Mohd Shah bin Daud v Pentadbir Tanah dan Jajahan Kota Bharu

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COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO D-01(A)-253–08 OF 2015
PRASAD ABRAHAM, ZAMANI A RAHIM AND MARY LIM JJCA
13 MAY 2016

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Land Law — Acquisition of land — Compulsory acquisition — Appellant's lands were compulsorily acquired by respondent — Whether order of compensation by trial judge final — Whether appellant entitled to late payment charge — Land Acquisition Act 1960

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This was an appeal by the appellant in respect of the decision of the learned trial court judge who refused to award the late payment charges pursuant to the Land Acquisition Act 1960 ('the Act'). The appellant was the owner of three plots of lands which were compulsorily acquired by the respondent to build 'Pasar Awam Mukim Pauh Daerah Panji Jajahan Kota Bharu'. Prior to the acquisition, the appellant's lands were illegally filled, leveled and buildings were constructed thereon by Majlis Perbandaran Kota Bharu ('MPKB'). In consequence of the acquisition, the land administrator awarded the appellant a total amount of RM163,567.82 as compensation. Dissatisfied with the award, the appellant filed reference to the trial court ('first hearing'). The trial court then ordered for an increase compensation for the value of land but gave no award on the claim for the buildings. The appellant then filed an appeal against the decision and as a result, the appeal court set aside the decision of the High Court and ordered a re-hearing ('second hearing'). At the second hearing, the trial court had dismissed the appellant's claim with regard to the costs of filling and late payment charges. The present appeal was in respect of the second hearing. The appellant submitted that there was no basis for the High Court to make the deductions of RM114,000 from the compensation given that there was no evidence of the filling and leveling costs before the court. With regard to the late payment charges, the appellant submitted that it was within his right to pursue the appeal. Further, the time taken to dispose the appeal was quite outside his control as it was this court that ordered a retrial based on a mistrial. On the other hand, the respondent contended that the decision of the trial court on compensation was final pursuant to ss 40D and 49 of the Act. The respondent also submitted that the language of s 48 of the Act was couched in permissive terms, thus, it was entirely a matter of discretion of the court.

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Held, allowing the appeal in part with no order as to costs:

(1) In the present appeal, the matter of filling and leveling related directly to the amount of compensation and was caught by the operation of ss 40D(3) and 49(1) of the Act. It would be highly irregular for the court to condone what was in fact an attempt to circumvent the clear intent of ss 40D(3) and 49(1) of the Act. The appellant's appeal on this issue was without merit (see para 29).

(2) It was wrong to deprive a claimant of the late payment charge simply on the ground that the claimant was seeking legal recourse. The issue of going to court to pursue a challenge on the award of compensation and thereby the time taken to dispose such a challenge, was actually irrelevant to a consideration under s 48 of the Act. It is implicit within s 48 of the Act itself that one has to go to court so that an order under the section may be made. Where the sum that the court grants in a land reference is in excess of the sum awarded by the land administrator, the court is vested with the discretion to order a late payment charge which levied at a rate of eight per cent per annum from the date of possession of the land to the date of payment of such excess. Thus, the respondent ordered to pay the appellant late payment charges on the excess at the rate of 8%pa from the date of possession of the scheduled lands (see paras 36–37 & 43).

[Bahasa Malaysia summary

Ini adalah rayuan oleh perayu terhadap keputusan hakim perbicaraan yang bijaksana yang menolak untuk mengaward caj bayaran lambat berikutan Akta Pengambilan Tanah 1960 ('Akta'). Perayu adalah pemilik tiga plot tanah yang diambil alih secara wajib oleh responden untuk membina 'Pasar Awam Mukim Pauh Daerah Panji Jajahan Kota Bharu'. Sebelum pengambilan tanah tersebut, tanah-tanah perayu diisi, diratakan dan bangunan-bangunan dibina di atasnya oleh Majlis Perbandaran Kota Bharu secara haram ('MPKB'). Akibat pengambilan tanah tersebut, pentadbir tanah mengawardkan perayu jumlah keseluruhan sebanyak RM163,567.82 sebagai pampasan. Tidak puas hati dengan award, perayu memfailkan rujukan kepada mahkamah perbicaraan ('pendengaran pertama'). Mahkamah perbicaraan kemudiannya memerintahkan bagi penambahan pampasan bagi nilai tanah tersebut tetapi tidak memberi award atas tuntutan untuk bangunan-bangunan tersebut. Perayu kemudiannya memfailkan rayuan terhadap keputusan tersebut dan akibatnya, mahkamah rayuan mengetepikan keputusan Mahkamah Tinggi dan memerintahkan pendengaran semula ('pendengaran kedua'). Pada pendengaran kedua, mahkamah perbicaraan telah menolak tuntutan perayu berkaitan kos pengisian dan caj bayaran lambat. Rayuan ini adalah berkaitan pendengaran kedua. Perayu berhujah bahawa tidak terdapat asas bagi Mahkamah Tinggi untuk membuat penolakan sebanyak RM114,000 daripada pampasan yang diberikan bahawa tidak terdapat keterangan mengenai kos pengisian dan perataan tanah di hadapan mahkamah. Berkenaan caj bayaran lambat, perayu berhujah bahawa ia dalam haknya untuk memburu rayuan

tersebut. Selanjutnya, masa yang diambil untuk mendengar rayuan di luar kawalannya kerana mahkamah ini yang memerintahkan perbicaraan semula berdasarkan perbicaraan silap. Sebaliknya, responden berhujah bahawa keputusan mahkamah perbicaraan atas pampasan adalah muktamad berikutan ss 40D dan 49 Akta. Responden juga berhujah bahawa bahasa s 48 Akta diungkapkan dalam terma-terma permisif, oleh itu, ia adalah perkara budi bicara mahkamah sepenuhnya.

Diputuskan, membenarkan sebahagian rayuan tanpa perintah kepada kos:

(1) Dalam rayuan ini, perkara pengisian dan perataan berkaitan terus kepada jumlah pampasan dan berikutan ss 40D(3) dan 49(1) Akta. Ia akan menjadi sangat tidak teratur untuk mahkamah untuk membiarkan apa yang sebenarnya percubaan untuk memintasi niat jelas ss 40D(3) dan 49(1) Akta. Rayuan perayu atas isu ini adalah tidak bermerit (lihat perenggan 29).

(2) Adalah salah untuk menafikan penuntut kepada caj bayaran lambat hanya atas alasan bahawa penuntut memohon tindakan undang-undang. Isu mengenai ke mahkamah untuk memburu cabaran atas award pampasan dan oleh itu masa yang diambil untuk mendengar cabaran sedemikian, sebenarnya tidak relevan kepada pertimbangan di bawah s 48 Akta. Adalah tersirat dalam s 48 Akta itu sendiri bahawa seseorang perlu ke mahkamah dengan itu perintah di bawah seksyen tersebut mungkin boleh dibuat. Di mana jumlah yang mahkamah berikan dalam rujukan tanah adalah berlebihan daripada jumlah yang diawardkan oleh pentadbir tanah, mahkamah diletakhakkan dengan budi bicara untuk memerintah caj bayaran lambat yang dilevikan pada 8% setahun daripada tarikh milikan tanah kepada tarikh bayaran berlebihan sedemikian. Oleh itu, responden diperintah membayar perayu caj bayaran lambat atas bayaran lebihan pada kadar 8% setahun dari tarikh milikan tanah yang dijadualkan (lihat perenggan 36–37 & 43).]

Notes

For cases on compulsory acquisition, see 8(2) *Mallal's Digest* (5th Ed, 2015) paras 2356–2364.

Cases referred to

Calamas Sdn Bhd v Pentadbir Tanah Batang Padang [2011] 5 CLJ 125, FC (refd)

Koriah bt Sudar v Pentadbir Tanah Kuala Langat [2013] 3 MLJ 695; [2013] 5 CLJ 571, CA (refd)

Sin Yee Estate Sdn Bhd (now known as Y & Y Estate Sdn Bhd) v Pentadbiran Tanah Daerah Kinta [2006] 1 MLJ 12, FC (refd)

Syed Hussain bin Syed Junid & Ors v Pentadbir Tanah Negeri Perlis and another appeal [2013] 6 MLJ 626, FC (refd)

A *United Malacca Bhd v Pentadbir Tanah Daerah Alor Gajah & Other applications* [2003] 1 MLJ 465, FC (refd)

Legislation referred to

B Courts of Judicature Act 1964
Federal Constitution art 13
Land Acquisition Act 1960 ss 1, 9A, 40D, 40D(3), 48, 49, 49(1), First Schedule, para 1(2BA), 1(3)(b)

C **Appeal from:** Land Reference No 15–57 of 2008 (High Court, Kota Bharu)

Mohd Syukran Mohd Noordin (Syukran Noordin) for the appellant.
Azizan Abdullah (State Legal Advisor, Kelantan State Legal Advisor Office) for the respondent.

D **Mary Lim JCA (delivering judgment of the court):**

[1] This appeal deals with two central issues, one of which is a very narrow issue concerning the exercise of discretion by the learned trial judge on the matter of late payment charges under the Land Acquisition Act 1960 ('Act E 486'). The court below had refused to award such payment after an increase in compensation was awarded on the ground that the delay in payment was because the appellant had chosen to challenge the award.

F **[2]** Upon due consideration of the arguments on the law and on the facts, we unanimously allowed the appeal on this specific issue. These are our reasons in full.

SALIENT FACTS

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[3] On 10 April 2008, portions of three plots of lands belonging to the appellant were compulsorily acquired under the Land Acquisition Act 1960 in order to build 'Pasar Awam Mukim Pauh Daerah Panji Jajahan Kota Bahru'. The appellant sought compensation based on value of land and buildings upon H the lands.

[4] The land administrator awarded the appellant a total sum of RM163,567.82 as compensation based on land value at RM53.82 per square metre ('smp'). There was no compensation for buildings and other items I claimed by the appellant.

[5] The appellant was dissatisfied and filed a reference to court. This reference ended up being heard twice by the High Court. We shall refer to these proceedings respectively as the 'first hearing' and the 'second hearing'.

[6] At the first hearing, the appellant claimed compensation of RM638,410 for the value of the three lots of land and a further RM378,145 for buildings and appurtenant. On 5 April 2012, the High Court ordered an increase compensation for the value of land from RM53.82 smp to RM90 smp but gave no award on the claim for the buildings. This award rendered the total compensation for the value of land as RM273,458, an extra compensation of RM109,890. The appellant was dissatisfied and he appealed.

[7] On 17 June 2014, the Court of Appeal set aside the decision in the first hearing on the basis that it was made without the benefit of a proper trial. A re-hearing was ordered. Both the original award of the land administrator and that which was awarded under the first hearing were paid.

[8] At the second hearing on 1 July 2015, the High Court, inter alia, decided as follow:

(a) the value of all three plots of lands is increased to RM130 smp rendering the total compensation as RM395,200;

(b) costs of fill of RM114,000 is deducted from the compensation for the value of the lands;

(c) the net amount of compensation is RM7,742.20 (RM395,200 – RM273,458 – RM114,000);

(d) the appellant's claim for late payment charges of 8%pa on the additional compensation from the date of acquisition is dismissed;

(e) the appellant's claim for compensation of RM378,145 for the buildings on the lands is dismissed; and

(f) the appellant to pay RM4,000 as costs to the respondent.

[9] The present appeal arises under the second proceedings. It is in respect of only a part of that decision. The appellant is dissatisfied with the learned High Court judge's decision on the matter of costs of filling, late payment charges and payment of costs to the respondent. In the course of these proceedings before us, the appellant clarified that the appellant's real bone of contention is over the matter of the costs of filling and late payment charges.

DECISION OF THE HIGH COURT

[10] This is how the matter of the costs of filling and leveling arose and how it was dealt with by the High Court.

[11] Prior to being compulsorily acquired, the appellant's lands were filled, leveled and buildings ('gerai-gerai') constructed thereon by Majlis Perbandaran

Kota Bahru ('MPKB') without the appellant's permission. Except for a small section of the appellant's lands, this filling and leveling of a depth of approximately 12 feet brought the appellant's lands to the same level as that of the road.

[12] The appellant filed a successful claim for trespass against MPKB. MPKB admitted liability and a consent judgment was recorded before the High Court on 4 April 2013. So, at the time of the acquisition and certainly by the time of the land reference proceedings, the appellant's lands were already filled, leveled and built on by MPKB, though unlawfully. This filling and leveling of the appellant's lands actually enhanced or increased the value of the appellant's lands. But, because the filling and leveling were unlawful, as were the buildings or gerai that were constructed thereupon, the appellant was therefore not entitled to compensation based as is provided under the First Schedule to Act 486. Furthermore, the costs of filling and leveling the lands were not incurred by the appellant, but by MPKB. Consequently, the learned judge ordered that such costs, a sum of RM114,000 for all three lots, ought to be deducted from the compensation to be paid (this sum differs from that found in the sealed order of the court which reads a sum of RM117,632.20).

[13] It was the view of the court below that the appellant 'tidak boleh mendapat manfaat berganda'; that the appellant cannot claim double compensation by arguing on the one hand that MPKB had unlawfully trespassed on his lands when it filled, leveled and built on his lands while on the other hand, claiming for such works when the lands are compulsorily acquired. In short, the High Court decided that the appellant was not entitled to compensation for value added or brought upon by third parties such as MPKB. The sum of RM114,000 was thereby deducted from the compensation of RM395,200.

[14] The next main ground of discontent on the appellant's part is the application of s 48 of the Land Acquisition Act. Under this provision, the court may order the payment of late payment charges on such additional compensation. The charges are based on 8%pa and it may be granted from the date of when the land administrator took possession of the lands.

[15] This claim was rejected by the High Court on the basis that the delay of seven years in payment was occasioned by the appellant himself in opting to appeal against the order of the court – see para 19 of the grounds of decision.

SUBMISSIONS OF THE PARTIES

[16] Learned counsel for the appellant argued that there was no basis for the High Court to make the deductions given that there was no evidence of such costs before the court.

[17] As for the late payment charges, the appellant submitted that the High Court gave just one reason when rejecting this claim: that it was because the appellant had opted to appeal against the decision of the court. Learned counsel contended that it was within the appellant's rights to pursue the appeal. Furthermore, the time taken to dispose the appeal was quite outside his control. As it was, this court ordered a retrial based on a mistrial. With that retrial, the appellant had to incur additional costs in conducting the reference all over again. In any case, this item of claim is provided for under the law. Therefore, it ought to have been allowed.

[18] The respondent's arguments focused on two central issues. The first being that the instant appeal was not maintainable by reason of ss 40D and 49 of Act 486. These provisions stipulate that the decision of the court on compensation is final and that there is no further appeal on such matters. Since both issues raised by the appellant concern compensation, we were urged to dismiss the appeal. The Federal Court's decisions in *Calamas Sdn Bhd v Pentadbir Tanah Batang Padang* [2011] 5 CLJ 125 and *Syed Hussain bin Syed Junid & Ors v Pentadbir Tanah Negeri Perlis and another appeal* [2013] 6 MLJ 626 were cited in support.

[19] The respondent's second submission turned on the interpretation of s 48 itself; that the language is couched in permissive terms. Consequently, it was entirely a matter of discretion of the court, and in this case, discretion was exercised in the respondent's favour. The court found that the seven-year delay was due to the appeal initiated by the appellant himself and not by the respondent. That appeals process was also outside the control of the respondent. It would therefore be quite unfair to order the respondent to pay the late payment charges.

[20] Furthermore, it was submitted that if late payment charges were ordered to be paid from the date of possession of the lands, which is 15 September 2008, this would cause prejudice to the respondent. The respondent relied on yet another decision of the Federal Court; which is the decision in *Sin Yee Estate Sdn Bhd (now known as Y & Y Estate Sdn Bhd) v Pentadbiran Tanah Daerah Kinta* [2006] 1 MLJ 12. In that case, the Federal Court took the view that where the delay is not the fault of the respondent, interest should not be allowed.

A OUR DECISION

[21] As is required under the Land Acquisition Act 1960, the learned judge sat with two assessors and a proper hearing was conducted. On 1 July 2015, the court below made the following orders. First, the court allowed the appellant's claim for additional compensation. The additional amount allowed for all three lots added up to a sum of RM117,632.20. But, because the appellant had already received the amount of RM109,890 ordered to be paid in the first proceedings, the court ordered only the difference between the two sums to be paid. That effectively meant that the appellant was paid an additional amount of RM7,742.20.

[22] The court did not allow the appellant's other claims for costs of filling and leveling the land because these costs were incurred by the local authority and not by the appellant. Neither did the court award any additional compensation for the value of the buildings on the lands. Both these claims were disallowed because they arise from unlawfulness. MPKB had carried out those levelling works and constructed the buildings or gerai without the appellant's permission. These were unlawful acts of trespass as admitted by the local council in the civil suit brought by the appellant against the local council. The First Schedule to the Land Acquisition Act 1960, specifically para 1(3)(b) provides that such illegal or unlawful use cannot be a basis for compensation.

[23] We do not see any distinction between this item of claim with that concerning the costs of filling and leveling the road. Both items relate quite directly to the appellant's claims for compensation. In this respect, ss 40D(3) and 49(1) are clear in their resolve that the decision of the High Court is final and that there is no right of appeal for such matters. Section 40D(3) reads as follow:

> (3) Any decision made under this section is final and there shall be no further appeal to a higher Court on the matter.

[24] Section 49(1) provides:

> Appeal from decision as to compensation
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> (1) Any person interested, including the Land Administrator and any person or corporation on whose behalf the proceedings were instituted pursuant to section 3 may appeal from a decision of the Court to the Court of Appeal and to the Federal Court:
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> Provided that where the decision comprises an award of compensation there shall be no appeal therefrom.

[25] Both provisions have been examined by the apex court. First, in the case

of *Calamas Sdn Bhd v Pentadbir Tanah Batang Padang* . In that case, the complaint was that the High Court had ignored certain provisions of Act 486 including s 9A and para 1(2BA) of the First Schedule to the Act when assessing the value of the scheduled land for purposes of compensation. The High Court had awarded compensation based on housing development potential, ignoring the fact that the land use of the acquired land was actually categorised as 'agricultural'. The Federal Court had agreed with the submissions of the appellant that with the amendments to Act 486, it was no longer permissible to value scheduled land on such basis. According to the Federal Court:

> To continue valuing compulsorily acquired land (which is zoned for a specific use) based on its potential is to negate the provisions of the aforesaid amendment and render them redundant.

[26] Be that as it may, the Federal Court noted that the appeal was really about the amount of compensation, whether the High Court was correct in determining the amount of compensation to the appellant. On that note, the Federal Court was unequivocal in dismissing the appeal expressing that:

> [19] Coming back to s 40D(3) of the Act, I am of the view that the said section clearly stipulates that 'Any decision made under this section is final and there shall be no further appeal to a higher Court on the matter'.
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> [20] It is trite law that courts must give effect to the clear provisions of the law. In the instant appeal I do not see anything ambiguous in ss 40D(3) and 49(1) of the Act. In view of this, I am of the view that the appellant is precluded from appealing against the order of compensation issued by the learned trial judge.

[27] In the second case of *Syed Hussain bin Syed Junid & Ors v Pentadbir Tanah Negeri Perlis and another appeal* [2013] 6 MLJ 626 the Federal Court reiterated the approach taken in *Calamas Sdn Bhd.* The Federal Court opined that it had '... no reason to depart from the ... view' expressed in *Calamas Sdn Bhd* . In this second case, the acquired lands were actually three lots held under one title. The land administrator had valued the land separately attaching separate valuation to each of the three lots. The argument was that the land ought to have been valued as a single entity and that would have yielded a value far higher than the three separate values. The Federal Court found that this argument of separate or single valuation was in fact considered by the High Court.

[28] Regardless, the Federal Court found that the appeal remained one that was against the amount of compensation awarded. In this respect, the Federal Court said:

> [24] ... In our considered view, the appeal herein is nothing more than an attempt to circumvent the salient provisions of s 40D and 49(1) of the Limitation Act which precludes any party from appealing against the award of compensation.

[29] The decision of this court in *Koriah bt Sudar v Pentadbir Tanah Kuala Langat* [2013] 3 MLJ 695; [2013] 5 CLJ 571 which dismissed the appeal on quantum is of assistance. Once again, it was on the basis that s 40D is very clear and effect must be given to the provision when it unambiguously expresses its intent. In the present appeal, we find that the matter of costs of filling and leveling relates directly to the amount of compensation. Indeed, it is caught by the operation of ss 40D(3) and 49(1) and it would be highly irregular for this court to condone what is in fact an attempt to circumvent the clear intent of ss 40D(3) and 49(1). The appellant's appeal on this first issue is without merit and is therefore dismissed.

[30] In relation to the issue of late payment charges, this is quite different. This claim is not caught by ss 40D(3) and 49(1). This claim, sometimes referred to as a claim for interest, concerns the interpretation and application of s 48 which reads as follows:

> 48 Land Administrator may be required to pay late payment charges
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> If the sum which in the opinion of the Court the Land Administrator ought to have awarded as compensation is in excess of the sum which the Land Administrator did award as compensation, the award of the Court may direct that the Land Administrator shall pay late payment charges on such excess at the rate of eight per cent per annum from the date on which the Land Administrator took possession of the land to the date of payment of such excess to the Court or to the person interested.

[31] In the facts of the instant case, it is not in dispute that the sum finally awarded in compensation was in excess of the sum which the land administrator did award as compensation. The appellant's argument is that he should not have been deprived of this sum. He was merely pursuing his remedies under the law; and his pursuits have proved proper and fruitful as the Court of Appeal had ordered a retrial. It would therefore be quite wrong to deprive him of this sum. Both the appeal and the court process were furthermore outside his control.

[32] The respondent's arguments are the direct converse of these same arguments; that it was beyond their control and that they would be prejudiced if late payment charges were ordered.

[33] Having considered the arguments, the law and the facts, we agree with the appellant. Land is immovable property protected under art 13 of the Federal Constitution. Article 13 is quite emphatic in pronouncing that no person is to be deprived of his property save as in accordance with law. The law on compulsory acquisitions is governed by the Land Acquisition Act of 1960. Over the years, it has seen two amendments. The two amendments have not been substantive in changing its original effect and intent. In 1984, vide Land

Acquisition (Amendment) Act 1984 ('Act A575'), the interest rate was amended from six to eight per cent. In 1997, vide Land Acquisition (Amendment) Act 1997 ('Act A999'), the words 'late payment charges' replaced the original term 'interest'. Save for these amendments, the intent to compensate for late payment with interest has always been there.

[34] It is easy to see why Parliament would have provided for such late payments; it is clearly consistent with the protection afforded under art 13 of the Federal Constitution. Where a person has been deprived of his property not out his own free choice, there must be adequate compensation paid for that property. Generally, the adequacy of compensation is measured by reference to the market value of the property at the time of the acquisition. The further away one moves from that point of reference and determination, the closer one gets to concerns on the lawfulness of such acquisitions as the market values will differ over time. Hence, the substantial amendments to Act 486 vide the Land Acquisition (Amendment) Act 1997 (Act A999) which came into force with effect from 1 March 1998, to ensure that the hearing and making of acquisition awards are completed within a strict time frame of two years, failing which the acquisition will lapse.

[35] It is important to note that the imposition of late payment charges does not arise by reason of delay. It in fact arises only where the court is of the opinion that the sum which the land administrator ought to have awarded is in excess of the sum which the land administrator did or actually awarded. In other words, where upon hearing of the evidence at the reference, the court awards a value which is higher or more than that awarded by the land administrator, the court may order the land administrator to pay the late payment charges on the excess or the extra sum ordered to be paid. Thence, this order is only available where the reference results in an increase in the award of compensation, and not otherwise. That charge of late payment is calculated at the rate of 8%pa from the date of possession of the scheduled land. Such payment ensures that the compensation paid remains adequate as the landowner or persons interested is only paid compensation based on land values at a date that is long passed by the time the acquisition proceedings are completed.

[36] With respect to the learned High Court judge, it is wrong to deprive a claimant of this late payment charge simply on the ground that the claimant is seeking legal recourse. In our view, the issue of going to court to pursue a challenge on the award of compensation and thereby the time taken to dispose such a challenge, is actually irrelevant to a consideration under s 48. It is implicit within s 48 itself that one has to go to court so that an order under the section may be made.

[37] Now, where the sum that the court grants in a land reference is in excess of the sum awarded by the land administrator, the court is vested with discretion to order a late payment charge. That late payment charge is levied at a rate of eight per cent per annum from the date of possession of the land to the date of payment of such excess.

[38] The above view and approach has strong resonance and support from the Federal Court's decision of *Sin Yee Estate v Pentadbir Tanah Kinta* . In *Sin Yee Estate*, learned senior federal counsel had pointed out that there was an extraordinary delay as everyone had decided to wait the outcome of the case of *United Malacca Bhd v Pentadbir Tanah Daerah Alor Gajah & Other applications* [2003] 1 MLJ 465. This decision finally settled the dispute on the proper court to hear appeal cases on land acquisition matters before and after the establishment of the Court of Appeal on 24 June 1994 and the amendments to the Courts of Judicature Act 1964 as well as to Act 486.

[39] The Federal Court agreed with the argument of learned senior federal counsel that the delay in the case was 'beyond the control of the respondent'. The Federal Court also accepted the submission that since the calculation of interest would be cumulative in nature, the amount of compensation allowed by the appeal together with the interest calculated from the date the land administrator took possession of the land 'would be a severe double blow to the respondent as well as to the government'. Consequently, the Federal Court was 'of the view that unless there are special reasons to the contrary, interest ordinarily should be granted to the claimant under this section as a matter of course unless there are some special reasons for disallowing it'. The interest was finally disallowed because the court found that the delay was not the fault of the respondent.

[40] In the present appeal, the learned High Court judge is quite clear on his reasons as to why this item was disallowed. It is because of the pursuit of legal remedies. This refers to the two sets of proceedings.

[41] With respect, this reasoning for the refusal to exercise discretion is plainly erroneous. As we had pointed out earlier, it is implicit in s 48 that it is the court that grants an order under s 48. Going to court and being subjected to its rigours cannot be any reason to deny any claimant, especially a successful one, of rights afforded under statute. As pronounced by the Federal Court, 'interest ordinarily should be granted to the claimant under this section as a matter of course unless there are some special reasons for disallowing it'.

[42] We cannot accept the reason suggested by the respondent as warranting deprivation or thwarting of that interest or late payment. It is certainly, not a special reason or circumstance for disallowing the appellant's claim under s 48.

[43] Accordingly, we unanimously allow the appeal in part and direct that the respondent do pay the appellant late payment charges on the excess at the rate of 8%pa from the date of possession of the scheduled lands. We further order no costs here and below and order that the deposit be refunded to the appellant.

Appeal allowed in part with no order as to costs.

Reported by Dzulqarnain Ab Fatar